

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**ANITA L. SEVERANCE,**

**Plaintiff,**

**v.**

**GERBER LIFE INSURANCE  
COMPANY,**

**Defendant.**

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**C.A. NO. 4:17-cv-03098**

**DEFENDANT’S NOTICE OF REMOVAL**

Defendant Gerber Life Insurance Company (“Gerber” or “Defendant”) files this Notice of Removal pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446, and would show the Court as follows:

**I. COMMENCEMENT AND SERVICE**

1. On June 8, 2017, Plaintiff Anita L. Severance (“Plaintiff” or “Severance”) commenced this action against Defendant by filing Plaintiff’s Original Petition in the 284<sup>th</sup> Judicial District Court of Montgomery County, Texas, styled Case No. 17-09-10874; *Anita L. Severance v. Gerber Life Insurance Company*.<sup>1</sup>

2. Defendant was served with process on September 21, 2017.<sup>2</sup>

3. This Notice of Removal is timely filed within thirty days of the receipt of process of a copy of the initial pleading, from which it was ascertained that the case is one which is removable, pursuant to 28 U.S.C. § 1446(b). This Notice of Removal is also filed within one year of the commencement of this action, and is thus timely pursuant to 28 U.S.C. § 1446(c).

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<sup>1</sup> See Exhibit B.

<sup>2</sup> See Exhibit F.

## II. GROUNDS FOR REMOVAL

4. Defendant is entitled to remove the entire state court matter to this Court pursuant to 28 U.S.C. § 1332(a). Section 1332(a) provides, in pertinent part, that “[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different states . . . .”

5. Removal of the entire state court matter to this Court is also proper under 28 U.S.C. §§ 1441(a) and 1446(a) because this Court’s district and division embraces the pending state court action in the 284<sup>th</sup> Judicial District Court of Montgomery County, Texas.

6. Because the parties are completely diverse and the amount in controversy exceeds \$75,000 under 28 U.S.C. § 1332(a), Defendant is entitled to remove Plaintiff’s Complaint to this Court pursuant to 28 U.S.C. § 1441.

### A. The Parties are Completely Diverse

7. This is an action with complete diversity of citizenship between Plaintiff and Defendant.

8. Plaintiff resides in the state of Texas.<sup>3</sup> Plaintiff is therefore a citizen of Texas within the meaning and intent of 28 U.S.C. § 1332.

9. Gerber is incorporated in the State of New York and has its principal place of business in White Plains, New York. Gerber is therefore a citizen of New York within the meaning and intent of 28 U.S.C. § 1332.

10. No change of citizenship has occurred since commencement of the state court action. Accordingly, diversity of citizenship exists among the proper parties.

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<sup>3</sup> See Exhibit B, § 2.

**B. Amount in Controversy Exceeds \$75,000**

11. According to the Petition, Plaintiff seeks monetary relief over \$200,000.00.<sup>4</sup> Therefore, Plaintiff's Petition establishes that the total amount in controversy in the action exceeds the sum of \$75,000.00, and this Court has jurisdiction under 28 U.S.C. § 1332.

**III. VENUE**

12. Venue lies in the United States District Court for the Southern District of Texas, Houston Division, pursuant to 28 U.S.C. §§ 1441(a) and 1446(a) because Plaintiff filed the state court action in this judicial district and division.

**IV. CONSENT TO REMOVAL**

13. Because Gerber is the only defendant, all defendants join in and consent to this removal.

**V. NOTICE**

14. Gerber will give notice of the filing of this Notice of Removal to all parties of record pursuant to 28 U.S.C. § 1446(d).

15. Gerber will also file with the clerk of the state court, and will serve upon Plaintiff's counsel, a notice of the filing of this Notice of Removal.

**VI. JURY DEMAND**

16. Plaintiff has demanded a jury trial in the state court action.

**VII. STATE COURT PLEADINGS**

17. Copies of all state court pleadings and orders are attached to this Notice of Removal:

Exhibit A: Index of Matters Being Filed;

Exhibit B: Copy of Plaintiff's Original Petition;

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<sup>4</sup> See Exhibit B, § 30.

- Exhibit C: Copy of Civil Case Information Sheet;
- Exhibit D: Copy of Civil Process Request Form;
- Exhibit E: Copy of Citation Issued to Gerber Life Insurance Company;
- Exhibit F: Copy of Return of Citation;
- Exhibit G: Copy of the Civil Docket Sheet from the 284<sup>th</sup> Judicial District Court of Montgomery County, Texas; and
- Exhibit H: List of Counsel of Record.

### **VIII. CONCLUSION**

WHEREFORE, Gerber Life Insurance Company, pursuant to the statutes cited herein and in conformity with the requirements set forth in 28 U.S.C. § 1446, removes this action from the 284<sup>th</sup> Judicial District Court of Montgomery County, Texas, to this Court.

Dated: October 16, 2017.

Respectfully submitted,

EDISON, MCDOWELL & HETHERINGTON LLP

By: Blaine B. Johnson

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**ATTORNEYS FOR DEFENDANT  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served on October 16, 2017, on the following counsel of record by certified mail, return receipt requested:

Roger G. Jain  
Thomas H. Smith III  
Roger G. Jain & Associates, P.C.  
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Blaire B. Johnson